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JOHN F WOOD
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OFFICE OF PETITIONS

In re Application of	:	
SCOTT EVANS	:	
Application No. 09/267,840	:	DECISION ON PETITION
Filed: 03-12-1999	:	
Attorney Docket No. EVA-001	:	

This is a decision on the renewed petition under 37 CFR 1.181, filed August 6, 2007 (certificate of mailing dated August 3, 2007), to withdraw the holding of abandonment.

On June 29, 2006, the Office mailed a final Office action, which set a three-month shortened statutory period to reply. In the apparent absence of a timely reply, the Office mailed a Notice of Abandonment on January 12, 2007.

Applicant requested that the Office withdraw the holding of abandonment as stated in the Notice of Abandonment mailed January 12, 2007. Applicant averred that the Office issued the Notice of Abandonment in error because applicant filed a timely and proper reply to the final Office action of January 3, 2007 (certificate of mailing December 29, 2006). Applicant asserted that he filed a Notice of Appeal and a request for an extension of time for response within the third month, accompanied by a certificate of mailing dated December 29, 2006. In support of the assertion, applicant provided a copy of the return, date-stamped postcard acknowledging receipt of a Transmittal; Notice of Appeal; a Request for Reconsideration; a Petition for Extension of Time; and a check in the amount of \$760.00 fee in the USPTO on January 3, 2007. Copies of these documents accompanied the petition.

Upon a review of the record, applicant has established that he submitted a timely reply to the final Office action in the form of a Notice of Appeal and a three-month extension of time on January 3, 2007 (certificate of mailing December 29, 2006). Therefore, the two-month extendable period to file an appeal brief in compliance with 37 CFR 41.37, accompanied by the fee, began to run from January 3, 2007, the date of filing the notice of appeal. Accordingly, applicant was required to submit an appeal brief or other appropriate response on or before March 3, 2007 (or August 3, 2007, accompanied by a request for an extension of time for response within the fifth month and fee).

With the present renewed petition, applicant submitted a timely request for continued examination, a request for an extension of time for response within the fifth month, and the requisite fees. In view thereof, the petition is **granted**. The Office mailed the Notice of Abandonment in error. Accordingly, the holding of abandonment is withdrawn and the application is restored to pending status in light of the timely submission of the reply.

This application is being referred to Technology Center AU 3627 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the previously filed submission in accordance with 37 CFR 1.114.

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3211.



Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions